REMARKS

The Office Action, mailed March 21, 2008, considered and rejected claims 1, 2, 5, 7, 8, 22-25, 32 and 33. Claims 1, 2, 5, 7, 8, 22-25, 32 and 33 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Ward* (U.S. Patent No. 6,756,997) in view of *Marsh* (U.S. Patent No. 6,208,799), *Bertis* (U.S. Patent No. 6,564,005), and *Horlander* (U.S. Patent No. 6,650,824).[1]

By this paper, claims 1 and 22 have been amended, claim 34 has been added, and no claims have been cancelled. Accordingly, following this paper, claims 1, 2, 5, 7, 8, 22-25 and 32-34 are pending, of which claims 1, 22 and 34 are the only independent claims at issue.

As reflected above, Applicant's claims are generally directed to managing conflicting recording schedules for broadcast recordings. In particular, the claims recite an invention that allows a conflict in a broadcast schedule that exists at the time the user selects recording to be immediately stored and to persist such that the conflict can be automatically resolved, without a user or system immediately attempting to resolve the conflict or re-program the scheduled recordings. As reflected in claim 1, for example, an exemplary method according to the present invention includes receiving user input from a particular user selecting a first program to be recorded. Thereafter, the same user selects a second program for recording. At the time the user input selecting the second program for recording is received, it is determined that a conflict exists between the first and second programs. Despite the conflict, the system abstains from attempting to resolve the conflict, and instead stores the conflicting information in a recording list indicating that the particular user has selected both the first and second programs for recording. The stored information thus persists a conflict that existed at the time the second program was selected. The system then selects the first program and programs the recording apparatus to schedule recording of the first program at the first broadcast time. Subsequent to such programming, the recording apparatus continues to store the information specifying that the user has selected conflicting programs, without requiring a user to resolve the conflict. In response to a subsequent event such as detecting that a new tuner has been added or that a start/stop time of the first program has changed, the recording apparatus is automatically

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[1] Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

programmed to schedule recording of the second program at the broadcast time originally indicated.[2]

While *Ward, Marsh, Berstis* and *Horlander* are each generally directed to recording programming, Applicant respectfully submits that they fail, whether cited individually or in combination, to disclose or suggest Applicant's invention as claimed above. For example, among other things, the cited references fail to teach or disclose a method or a system in which when a subsequent event (i.e., a new tuner or change in the first program time) is detected, the second program that was previously not programmed for recording, is then recorded at the broadcast time at which it was originally selected, as recited in combination with the other claim elements in claims 1 and 34, or visually distinguishing between programs in a recording list so that programs which are scheduled to record despite a conflict, programs which are scheduled to record and have no conflict, and programs which are not scheduled to record due to a conflict each have different visual indicators, as recited in combination with the other claim elements in claims 22 and 34.

For instance, *Ward* discloses an EPG in which windows are provided to provide information to the user. (Col. 10, ll. 50-60). Using the EPG windows, a user can use a record function to select to record a future-scheduled program and have it recorded in the Record List. (Col. 11, ll. 48-60). Multiple record commands may be provided by the user and, in some cases, such commands can conflict by having overlapping dates, times and durations. (Col. 12, ll. 37-49). When the record function of the EPG receives viewer instructions to record a particular program, it compares the newly received instruction to other instructions in the Record List. (Col. 12, ll. 41-45). When the received second program is determined to have an overlap with the already listed program, the EPG generates a message that is presented to the user and which describes the conflict. (Col. 12, ll. 42-49). The user is then <u>required</u> to revise or discard the record instruction as the entry of conflicting instructions is prohibited in the Record List. (Col. 12, ll. 52-55). Thus, the second record command is stored in the Record List only after the conflict is resolved.

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[2] Independent claim 22 recites a recording system and generally corresponds to the method of claim 1, but further recites wherein the recording list is maintained to visually indicate differences between each of programs with a conflict but scheduled to record, programs with a conflict not scheduled to record, and programs without a conflict. Claim 34 recites elements of both claims 1 and 22, and further recites aspects related to a default rule set employed in selecting which program to record, and the reprogramming of the second program when a new tuner is detected.

The Office Action acknowledges, however, that *Ward* fails to disclose the automatic reprogramming of the recording apparatus to schedule recording of the second program in response to the subsequent event. (Office Action, pp. 4, 5), and thus turns to *Marsh*.

Marsh generally discloses a set-top VCR recording system which allows automatic adjustment of recording instructions upon the occurrence of changes to a program's recording schedule. In particular, a record request can be received for a particular program which has a particular date, time and duration. (Col. 7, ll. 18-20). When the request is received, and before it is stored in one of the systems record-timers, the request must be investigated for conflicts. (Col. 7, ll. 20-22). A conflict may exist because all of the record-timers have existing program record requests or because there is a day/time conflict. (Col. 7, ll. 24-39). In the case of a day/time conflict, an alert is sent to the user's TV screen where the user cancels one of the conflicting requests. (Col. 7, ll. 38-44; Col. 13, ll. 35-54). It is only when no conflict exists that the record request is stored in the record timer. (Col. 7, ll. 44-48). As an alternative to cancellation, however, the same program can be set to record at a different time, date or channel. (Col. 13, ll. 54-60). As the Office Action notes, this allows the system to "provide an alternative solution by finding additionally [sic] programming times and recording." (Office Action, p. 5). Thus, *Marsh* discloses (as the Office acknowledges) the use of a conflict resolution which, at the time of receiving the conflicting input, checks for an additional programming time for recording. Thus, as opposed to resolving the conflict after it has been stored in the recording/priority list and then recording it at the <u>original time received and which was subject to the conflict,</u> as is recited by the pending claims, *Marsh* discloses the opposite—namely that the conflict is resolved by recording the program at a different time.

Applicant respectfully submits that *Berstis* and *Horlander* also fail to remedy this deficiency of *Ward.* In a similar manner, *Berstis* discloses a system in which a multi-user video hard disk recorder is used to store programming content for a variety of users on the system and resolves conflicts before the record requests are stored. In particular, *Berstis* discloses a system in which a parent or other "master user" adds and manages multiple user accounts corresponding to different persons who will use a particular broadcast receiver. (Col. 6, ll. 54-65; Col. 7, ll. 11-22, 43-58). Users which then have set-up accounts can record programming according to the security measures put in place by the master user. (Col. 7, ll. 46-58). To record a program, a user enters data regarding the particular program desired to be recorded. (Col. 8, ll. 19-25).

Upon entering such recording information, the system checks the user's choices against the security restrictions. (Col. 8, ll. 30-35). If the user's selected program does not violate any restrictions, the system then also checks to ensure that the user's request does not conflict with another user's request for the same time period. In other words, "a user can not request that a television program be recorded for him at a particular time on a particular channel if another user has already requested that a different television program be recorded at the same time on a different channel." (Col. 8, ll. 35-42). Only if such a check reveals no conflicts is the program information saved in the user's program schedule. (Col. 8, ll. 49-53). Thus, similar to the disclosures in *Ward* and *Marsh*, *Berstis* also discloses that conflicting record requests are immediately resolved and that each request is stored only if a conflict is resolved or does not exist. Moreover, as no conflicts can be scheduled, it is therefore also impossible that *Bertsis* disclose that after a subsequent event, the conflicting and previously unscheduled program be automatically set for recording at the original time received in the conflicting record request.

Horlander provides no additional insight to remedy the deficiencies of the remaining references. In particular, *Horlander* describes a system for recording analog and digital signals, in which a recording apparatus includes a VCR and a DSS that can schedule programs. When a conflict occurs, the program event is placed in both the VCR and DSS, and a number is returned by the DSS to indicate a conflict. The VCR generates a display indicating the conflicting events so that the user can ignore the conflict or delete the new event. (Col. 13, ll. 1-12). Notably, however, *Horlander* provides no disclosure as to which event is then selected for recording, let alone that an additional, subsequent event occurs to add a tuner or change the time of the original event, thereby causing the originally conflicting event to occur at its original time.

Accordingly, when the references are cited in combination, the references actually disclose that conflicting events are generally removed or changed so that, upon later changes, there would be no record of the originally conflicting event so that it can be automatically restored, or merely that a conflict is presented to the user to make the user aware of the conflict. No disclosure or reasonable support, however, is found to indicate that when a new tuner is added, or the time of the first (and scheduled event) changes, the second (and unscheduled event) is then newly scheduled <u>at its original time</u>. In fact, as acknowledged by the Office, the very reason for incorporating *Marsh* into the combination of references is so that additional times for the conflicting event can be found and to record the event at a different time.

With respect to claims 22 and 34, Applicant further respectfully submits that there is no teaching in the combination of references that can be used to reasonably support the claims that include a recording/priority list that visually distinguishes between each of: (1) selected, conflicted, and scheduled programs; (2) selected, conflicted, and unscheduled programs; and (3) selected and un-conflicted programs, as recited in combination with the other claim elements. For example, the references provide no indication that any recording list identifying multiple record events includes any visual distinction between events that have a conflict and are still scheduled to record, and events that don't have a conflict and are scheduled to record. Indeed, as noted above, *Ward, Marsh* and *Berstis* expressly require that when a conflict is input, it must be cancelled or resolved. As there is no mechanism for entering conflicts that will persist in the recording list, there is likewise no reason to distinguish between conflicting and non-conflicting programs. Furthermore, *Horlander* expressly teaches that when a conflict is found, the conflicting events are displayed to the user. Thus, in the list in *Horlander* the only list presented identifies the conflicting events. No indication is ever made, however, to visually distinguish between each of the: (1) selected, conflicted, and scheduled programs; (2) selected, conflicted, and unscheduled programs; and (3) selected and un-conflicted programs, as recited above. Indeed, once a conflict has been scheduled around by the systems in the cited art, there is no apparent reason why one would visually distinguish between an event that is scheduled to record and has no conflict as compared to an event that is scheduled to record and was scheduled despite the conflict.

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as the required motivation or suggestion to combine the relied upon notice with the other art of record.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at (801) 533-9800.

Dated this 19th day of September, 2008.

Respectfully submitted,

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